



CAUSE NO. 25,842

EX PARTE

IN THE 1A DISTRICT COURT

OF TYLER COUNTY

NETFLIX, INC.,

STATE OF TEXAS

**NOTICE OF NON-SUIT**

On November 12, 2021, Netflix, Inc. filed its Original Petition for a Pre-Trial Writ of Habeas Corpus seeking dismissal of all charges the State filed under Texas Penal Code § 43.262 in *State v. Netflix, Inc.*, Cause No. 13,731, which the State issued on September 25, 2020. Rather than actually respond to Netflix's petition and defend the grand jury's indictment in No. 13,731, or Section 43.262 itself, the State waited until the day before the hearing on Netflix's petition to dismiss Cause No. 13,731 *without prejudice* and then issued four new indictments charging Netflix with felony violations of Section 43.25 of the Texas Penal Code (Cause Nos. 13,968 to 13,971).

Although Netflix's facial challenge to Section 43.262 remains a live issue, the State has deprived Netflix of its right to vindicate its rights in these proceedings and by adding new charges under Section 43.25. Pretrial habeas relief extends only to petitioners who make facial challenges to statutes, and only when a successful challenge grants the petitioner *complete* relief. *E.g., Ex Parte Bishai*, No. 09-21-00158-CR, 2021 WL 5498211, at \*3–4 (Tex. App.—Beaumont Nov. 24, 2021, no pet. h.). The State has therefore deprived Netflix of its pre-trial challenge because (1) Netflix has already conceded in its habeas petition that it has no facial challenge to Section 43.25 (i.e., because that section is *facially* constitutional),<sup>1</sup> and (2) invalidating Section 43.262 will not grant Netflix complete relief given the State's new indictments. *See, e.g., id.* (holding petitioner lacked cognizable relief because, even if successful, petitioner would remain subject to prosecution under four unchallenged indictments).

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<sup>1</sup> Whether the statute is unconstitutional as applied to Netflix will be addressed in due time.

Because the State's action deprives Netflix of its rights to pre-trial habeas relief, Netflix's gives this notice non-suiting this action WITHOUT PREJUDICE.

Date: March 2, 2022

Respectfully submitted,

/s/ Joshua J. Bennett

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

This is to certify that on March 2, 2022, a true and correct copy of the foregoing instrument was delivered to all counsel of record through a court-approved electronic filing system.

/s/ Joshua J. Bennett

Joshua J. Bennett

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Associated Case Party: Netflix, Inc.

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